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Settlement Conference

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 IN RE CITIGROUP BOND
4 LITIGATION,

08 CV 9522 (SHS)

5 -----x

6
7 New York, N.Y.
8 July 23, 2013
9 10:03 a.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13 APPEARANCES

14 BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP
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1 (In open court)

2 (Case called)

3 THE COURT: Please be seated.

4 We're here for the hearing on the proposed settlement,
5 plan of allocation, and motion for attorneys' fees.

6 Who's going to be making the presentation on behalf of
7 plaintiffs?

8 MR. SINGER: I will be, your Honor.

9 THE COURT: Sure. Tell me whatever it is you'd like
10 to tell me.

11 MR. SINGER: Certainly. Again, your Honor, may it
12 please the Court, Steven Singer from Bernstein Litowitz on
13 behalf of the bond plaintiffs. Your Honor, with the Court's
14 permission, I'll first address the proposed settlement and the
15 plan of allocation and then, after that, the fee and expense
16 application.

17 THE COURT: Sure.

18 MR. SINGER: With respect to the settlement, as set
19 forth in our papers, it's our position that the proposed
20 settlement is fair, adequate and reasonable and merits approval
21 pursuant to the standards set forth by the Second Circuit in
22 the *Grinnell* case. The proposed settlement is for \$730 million
23 in cash, which has been deposited in escrow and is currently
24 earning interest to the benefit of the class.

25 We respectfully submit that that settlement is an

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1 outstanding result. It's the second largest recovery in a
2 securities class action brought on behalf of purchasers of debt
3 securities. It is one of the three largest securities class
4 action recoveries in a case that does not involve a financial
5 restatement, and it is one of the 15 largest recoveries in any
6 securities class action, in securities class action history.

7 And as I'll discuss in greater detail in a few
8 minutes, the settlement was achieved only after counsel
9 expended tremendous effort litigating this case for more than
10 four and a half years in the face of substantial risks. And
11 this result was achieved without significant assistance from
12 any related government action.

13 And in fact, as set forth in our papers, bond
14 plaintiffs were the only parties to litigate the vast majority
15 of the claims that were at issue in our case.

16 THE COURT: I'm sorry, say that again.

17 MR. SINGER: We were the only parties to litigate the
18 vast majority of the claims at issue in our case. Meaning that
19 many of our claims related to, for instance, valuation of SIV
20 assets, valuations of CDOs, loss reserves, allocations --

21 THE COURT: Well, certainly the CDO valuation was at
22 issue in the securities class action.

23 MR. SINGER: Part of it. For part of that.

24 THE COURT: Your class period was somewhat larger. Is
25 that what you're--

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1 MR. SINGER: Correct, for the CDOs and other subjects
2 that was unique to us, as was the allegations regarding
3 Citigroup's well-capitalized status. So those were unique to
4 us.

5 The settlement was also achieved through an extensive
6 negotiation process, including negotiations conducted under the
7 auspices of the Honorable Layn Phillips, a former federal
8 district court judge and extremely well-regarded mediator.

9 And while all of the *Grinnell* factors strongly support
10 settlement -- and they're addressed in detail in our papers --
11 I would like to focus on three of those factors now: The
12 reaction of the class, the inherent risks of the case, and the
13 advanced stage of the proceedings before settlement was
14 reached.

15 With respect to the reaction of the class, the
16 reaction of the bond class has been extremely positive. The
17 claims administrator has disseminated almost half a million
18 notices to bond class members and their nominees. We also
19 published notice nationally in the Wall Street Journal and over
20 the PR Newswire.

21 With respect to the settlement, we received virtually
22 no objections and not a single bond class member has objected
23 to the adequacy of the settlement. The lack of objections is
24 particularly notable here, given both the size of the class and
25 the fact that the class consists of bondholders which are owned

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1 largely by sophisticated financial institutions. And these
2 institutions typically have their own counsel, or access to
3 their own counsel. They're very familiar with securities class
4 actions. They have large financial interests in both the
5 corporation and in this litigation. And if they have an issue
6 with the settlement, or a fee request for that matter, they are
7 not hesitant to address. And the fact that we didn't get any
8 objections from institutions I think is quite notable.

9 With respect to requests for exclusion, we also got an
10 extraordinarily small number of exclusion requests for a class
11 of this size. In total, we received 31 requests for exclusion.
12 The majority of those, 18 of those 31, were submitted by
13 investors that either made a profit on their purchase of their
14 bond class securities, or aren't class members or did not
15 provide sufficient information to determine whether they are
16 class members.

17 Of the remaining 13, one request was filed by an
18 institution. One opted out and filed an individual case years
19 ago. And excluding that request, the remaining 12 investors
20 who purchased exclusion purchased just .0018 percent of the
21 bond class securities issued during the offerings period.

22 So to get so few objections and opt-outs in a case of
23 this size is extraordinary and it speaks volumes as to how the
24 class believes this settlement is an excellent result.

25 One final point on the reaction of the class, your

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1 Honor. Although the deadline for the submission of claim forms
2 is not until August 21st, the claims administrator has already
3 received more than 27,000 claim forms. Typically in these
4 cases, the vast majority of claim forms come in at the end of
5 the deadline. So I think this is a case where we are going to
6 get tens of-- obviously we're going to get tens and tens of
7 thousands of claim forms from class members.

8 With respect to the litigation risks as set forth in
9 our papers, this was an extremely complex and risky case. The
10 magnitude of the case itself was enormous. It involved 39
11 separate securities, 48 separate offerings, conducted over two
12 and a half years during rapidly changing market conditions.
13 The alleged misrepresentations included a host of false
14 statements on complex subjects, including Citigroup's loan loss
15 reserves, value of its CDOs, value of its SIVs, capital
16 adequacy and its exposure to subprime CDOs.

17 Significantly the Court claims in this case, the
18 claims which accounted for roughly 90 percent of our damages,
19 concerned estimates or matters of opinion or subjective
20 judgment about the value of assets such as the value of CDOs,
21 the values of the SIVs, the capital adequacy, and obviously the
22 loan loss reserves.

23 And to prove that Citigroup's valuation of these
24 assets were materially false and misleading was a difficult
25 task. We've set forth the risks in our papers. I won't detail

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1 all of them, but in sum Citigroup used very complex financial
2 models to set its loan loss reserves as well as to determine
3 the value of its CDOs and SIVs and calculate its capital
4 adequacy. These models were reviewed not only by Citigroup's
5 independent auditor, but also by regulators such as the OCC and
6 the Federal Reserve, none of which ever concluded that
7 Citigroup misrepresented the value of its mortgage-related
8 assets. And, in fact, Citigroup's outside auditor actually
9 certified the accuracy of the company's financial statements
10 twice during our class period.

11 To prevail on these claims, this wasn't what I'll call
12 almost a traditional Section 11 claim, where you just have to
13 show falsity; to the contrary. We also had to overcome the
14 heightened standards of the Second Circuit's decision in the
15 *Fait v. Regions Financial* case, which came down literally in
16 the midst of discovery, as your Honor knows. And that was a
17 difficult case from a plaintiff's perspective. *Fait* held that
18 to establish liability for a misstatement of opinion, the
19 plaintiff must prove that defendants misstated their truly held
20 belief. The courts have held that's essentially equivalent to
21 scienter. And here, the vast majority of our claims would
22 have fallen under the rubric of opinions under the Second
23 Circuit's test. The valuation claims, loan loss reserves, all
24 of those.

25 And thus to prevail on the Court claims in this case,

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1 we would have had to prove that defendants not only misstated
2 the value of their mortgage-related assets, not only were those
3 inaccurate, but that defendants did so deliberately or, at a
4 minimum, recklessly. And that's extremely difficult to do,
5 especially when it concerns matters of judgment, and
6 particularly where you have auditors who review valuations and
7 reserves and sign off on financial statements.

8 So, again, Judge, I think on liability there were very
9 substantial risks.

10 There are also substantial risks with respect to
11 establishing damages in this case. Proving damages would have
12 been complicated given that there were 39 different securities
13 at issue in this case sold over more than 40 separate offerings
14 over two and a half years. These securities did not all trade
15 alike. They reacted in many instances differently to different
16 disclosures. They were issued during different periods of
17 time.

18 And defendants had a number of significant arguments.
19 I think it's notable that in our case, the bond securities did
20 not drop significantly in price in 2007, when Citigroup first
21 disclosed its subprime exposure, allegedly first disclosed it,
22 and took some large write-downs. The major declines in the
23 price of the bond class securities occurred in the fall of
24 2008 -- September/October/August, that period of time -- when
25 there was sort of what we'll call the apex of the financial

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1 crisis.

2 And defendants had strong arguments that the major
3 declines in the price of these securities were caused by
4 marketwide factors rather than any alleged misstatements and
5 omissions. In fact, defendants would point to many times the
6 bonds dropped because of disclosures concerning financial
7 institutions other than Citigroup.

8 So, for example, when Lehman filed for bankruptcy,
9 that caused a drop in the bond class securities. The issues
10 relating to Fannie Mae, Freddie Mac, AIG, again those also had
11 an impact on Citigroup's securities. So defendants would have
12 argued that these were really marketwide factors, not issues
13 pertaining directly to Citigroup.

14 Defendants also would have argued that the declines in
15 the fall of 2008 were caused by investor overreaction rather
16 than any misstatements. And, again, defendants would have
17 contended that the securities of numerous major financial
18 institutions declined in value at this time, and that Citigroup
19 actually required the government bailout not because of the
20 quality of its mortgage-related assets, but just because it was
21 suffering a liquidity crisis as a result of a market panic.

22 And to that end, Judge, and one final point, is that
23 the prices of many of the bond class securities quickly
24 rebounded in this case to trade at or above par where they
25 continue to trade today. And I think that defendants would

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1 have argued that this confirmed that any declines were not due
2 to real financial problems at Citigroup, but to a market panic,
3 so to speak. And also under the statute establishes that any
4 investors who retain their securities had not suffered any
5 damages and could not recover.

6 So those are some of the issues with respect to
7 damages.

8 The stage of the proceedings at which the settlement
9 was reached was extremely advanced. Bond plaintiffs had a
10 thorough understanding of the strengths and weaknesses of their
11 claims at the time they agreed to a settlement. This
12 settlement was only obtained after more than four and a half
13 years of litigation, which included, among other things,
14 overcoming defendants' motions to dismiss, related motion for
15 reconsideration, an extensive class certification process,
16 which entailed nearly two dozen depositions of all of the bond
17 plaintiffs, many of their investment advisors, as well as
18 extremely extensive class certification briefing.

19 Successfully opposing defendants' effort to bring a
20 Rule 12(c) motion for judgment on the pleadings after the
21 Second Circuit issued its decision in *Fait*, conducting an
22 enormous amount of fact discovery, and, in fact, really getting
23 to virtually the end of fact discovery, which included
24 reviewing more than 42.5 million pages of documents and taking
25 or defending a total of 76 depositions, including taking the

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1 depositions of some of Citigroup's most senior executive
2 officers, such as the corporation's former treasurer, former
3 chief risk officer, and former CEO chuck prince. And also
4 conducting significant work with numerous experts on subjects
5 such as damages, CDO and SIV valuation, loan loss reserves and
6 issues of that nature.

7 One final point, your Honor, just as I mentioned
8 earlier, in terms of the settlement discussions themselves.
9 The settlement discussions here were at all times arm's length
10 and adversarial. We had preliminary discussions in 2012. As
11 your Honor knows, in late summer/early fall of 2012, the
12 parties concluded that it made sense to see if they could
13 mediate the case. At that point we contacted the Court and
14 asked your Honor to stay the case for a period of time while we
15 engaged in those settlement discussions and we shut down our
16 litigation efforts at that time. All discovery within a week
17 or so shut down.

18 And we then went and mediated with Judge Phillips, who
19 was also the mediator in the stock action and obviously
20 familiar with the case. Mediated with Judge Phillips. And the
21 case actually settled in January, after Judge Phillips issued a
22 mediator's recommendation and both parties accepted it.

23 So, your Honor, that's just a summary of the reasons
24 why we say the settlement is fair and reasonable and should be
25 approved as set forth in our papers. If your Honor has any

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1 questions, I can answer them or I could also-- I know we
2 received a couple of objections to certain aspects of the
3 settlement. We dealt with those in our papers, but if your
4 Honor wants me to address those briefly, I can.

5 THE COURT: No, not in terms of the settlement itself.
6 No need.

7 MR. SINGER: Okay.

8 THE COURT: I fully understand the settlement.

9 MR. SINGER: Okay. Just briefly, Judge, on the plan
10 of allocation, also, that plan of allocation is fair, adequate
11 and reasonable. We developed a plan in consultation with our
12 damages expert. It basically allocates the settlement based on
13 the statutory measure of damages set forth in Section 11(e) and
14 there are no objections to the plan of allocation. So we also
15 submit that that should be approved as well.

16 THE COURT: I guess in terms of the settlement itself,
17 the only question I have is the same that I had in securities.
18 Corporations only act through individuals. You certainly have
19 a number of individuals who are the defendants here survive the
20 motion practice.

21 The issue is why didn't you try to get some of the
22 settlement amount from the individuals as a deterrent?

23 MR. SINGER: Well, I think there's-- I think this case
24 is actually different than the stock case in that regard, your
25 Honor. I think the questions that your Honor raised in the

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1 stock action, they're not as prevalent here principally because
2 the bond class consists of purchasers of debt, not stock.
3 We're not stockholders. And the settlement -- I know your
4 Honor raised a question about the transfer of money potentially
5 from current shareholders to a class consisting of current
6 shareholders and former shareholders.

7 Bond class members are creditors of the corporation.
8 We're not owners. So the payment in this case isn't a transfer
9 of money from current shareholders at all. It's a payment-- or
10 it isn't anything to current shareholders. It's a payment to
11 creditors of the corporation.

12 I do think with respect to deterrents, Judge, that a
13 settlement of this size is a deterrent to any future misconduct
14 by a corporation. I don't think you need to get individual
15 contributions in order for there to be a deterrent effect. We
16 settled a Bank of America case earlier this year. It was
17 approved by Judge Castel for \$2.4 billion. That did not
18 involve individual contributions, but I think the size of that
19 settlement is still a deterrent in effect to corporations, and
20 I think the same is true here.

21 And I think here, getting contributions from
22 individuals would have been extremely-- would have been --
23 short of going to trial would have been impossible, frankly.
24 No individuals profited from the offerings. This is not a case
25 where they were selling stock in an offering and were

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1 profiting. None of them profited. And they had very
2 significant defenses, not just before *Fait* but certainly after
3 *Fait* came down. Now we basically have to prove their scienter,
4 which was extraordinarily difficult, and they also had a due
5 diligence defense.

6 So I think it was very difficult to even-- it would
7 have been very difficult-- if we got a jury verdict, that's one
8 thing, but short of that, to get a recovery from individuals.

9 And I think also, Judge, this was a point I know was
10 made in the stock case, and we made it in our papers, too, but
11 the law is clear that the adequacy of the settlement should be
12 determined by looking at the overall compensation that the
13 class gets and not necessarily which defendants are paying and
14 where it's coming from.

15 And obviously, also, one final point that we made.
16 The individual defendants were indemnified by the corporation
17 here. So obviously to the extent an individual paid, Citigroup
18 would have been required to pay them back, again short of
19 trial.

20 So I think all of those, Judge, are reasons why we did
21 not obtain individual contributions.

22 THE COURT: Why don't you move on to the fees unless
23 there's another point you wanted to make on either settlement
24 or allocation.

25 MR. SINGER: No, your Honor, I can move on to the

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1 fees.

2 Bond counsel is applying for an award of 20 percent of
3 the settlement fund plus reimbursement of litigation expenses
4 of \$7,286,868.15. The bonds plaintiffs are also collectively
5 seeking reimbursement of their litigation expenses in the
6 amount of \$39,946.95. We respectfully submit that the fee
7 request is fair and reasonable under the factors set out by
8 Second Circuit in *Goldberger*, particularly in light of the
9 outstanding result obtained here. And here looking at --

10 THE COURT: Well, as a percentage you're seeking 20
11 percent.

12 MR. SINGER: Yes, Judge.

13 THE COURT: Everybody picks and chooses their own
14 comparative risk, but how do you come to the conclusion that 20
15 percent is appropriate?

16 MR. SINGER: Well, I think, Judge --

17 THE COURT: And your multiplier is 1.67.

18 MR. SINGER: Correct, Judge. And I think that's-- for
19 one thing-- multiple ways, your Honor. But, first, the
20 requested percentage is within the range of percentages awarded
21 by courts in this district and elsewhere in large settlements.
22 We've cited some of those to your Honor: The initial public
23 offerings case before Judge Scheindlin, where the Court granted
24 a 33 percent fee on settlement of \$586 million; there was
25 Adelphia before Judge McKenna, a 21.4 percent fee on a \$455

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1 million settlement; Freddie Mac before Judge Sprizzo, a 20
2 percent fee on \$410 million settlement; Oxford Health before
3 Judge Brian. And there are others that we cited.

4 But I think -- and your Honor alluded to it in your
5 comment about the multiplier -- courts in the Second Circuit
6 and elsewhere do not award percentage fees in a vacuum.

7 Also, Judge, the 20 percent fee, so your Honor is
8 aware, that's our retainer agreement with our plaintiffs. The
9 20 percent, when your Honor talks about the percentage, that's
10 within the range of percentages, but it was also the amount
11 that we set forth in our retainer agreements with our
12 plaintiffs and which they agreed was a reasonable fee here.

13 But courts in the Second Circuit, as I said, do not
14 award percentage fees in a vacuum. To the contrary, they look
15 at a number of factors. Chief among them, the quality of
16 result, the complexity of the case, the amount of work done.
17 And one of the things that they do -- and your Honor has noted
18 this, I know, in the stock action -- is that they look at the
19 lodestar to ensure that the fee is reasonable. And courts
20 recognize that, whereas, here counsel have expended
21 significant effort to obtain an outstanding result in a
22 difficult case, they are entitled to a reasonable multiplier on
23 their lodestar.

24 THE COURT: I think this is an outstanding result and
25 you are entitled to a reasonable multiplier. Both of those

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1 statements are true. I guess the issue is the validity of the
2 lodestar. And that issue goes to another issue that you know
3 I'm interested in, which is the "staff attorneys" usage. About
4 more than 80 percent of the hours were by staff attorneys.

5 So talk to me about that. That is, I asked for
6 documentation of contract attorneys and the answer that came
7 back, I think moderately disingenuously, was that we don't use
8 contract attorneys. I think it just may be a nomenclature
9 issue, but I may be wrong. If there's a significant
10 difference between contract attorneys and staff attorneys, I
11 want to know.

12 But I guess I need to know more about your staff
13 attorneys; the type of work they do, how they're brought on, if
14 they stay on after this project. As I say, the work they do,
15 they are far and away the workhorses of the case.

16 And, again, I don't think it's so easy just to say we
17 don't hire contract attorneys. So talk to me about who's
18 really doing the work here and the type of work they do. I
19 need to get a better sense of that, how they differ from
20 associate attorneys. Talk to me.

21 MR. SINGER: Yes, your Honor. I think the figure
22 actually for the staff attorneys -- and I think your Honor said
23 more than 80 percent. I think it's around 70 percent of the
24 overall lodestar. But that clarification aside, staff
25 attorneys --

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1 THE COURT: I show for you-- I may be wrong-- 166,000
2 hours for your firm, of which 134,000 were by staff attorneys.

3 MR. SINGER: I think it's roughly three-quarters for
4 our firm, but overall, for all of the firms, the overall
5 lodestar.

6 THE COURT: Okay.

7 MR. SINGER: But I think --

8 THE COURT: Give or take a couple of percentages, I
9 think the issue is still the same.

10 MR. SINGER: I agree. But what I said to your Honor
11 was 100 percent correct. And we do not hire contract-- these
12 are not contract attorneys. We do not use contract attorneys.
13 Our staff attorneys are employees of our firm. They are firm
14 employees. They receive W-2 forms, not form 1099s which are
15 the forms that --

16 THE COURT: Do they show up on the-- actually some of
17 these questions I know the answer to, but this one I don't. Do
18 they show up on your firm website?

19 MR. SINGER: They do not, Judge.

20 THE COURT: Do your associates show up on your firm
21 website?

22 MR. SINGER: Yes, Judge, they do.

23 THE COURT: All right.

24 MR. SINGER: But the reason for that is simply because
25 we put people on our website who communicate with opposing

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1 counsel and clients and we want to provide those-- and other
2 plaintiffs firms. We want to provide lawyers and our clients
3 with contact information and biographical information about the
4 people who they most deal with. And staff attorneys don't
5 typically have that function so we don't list them. But they
6 are firm employees under the law.

7 THE COURT: All right. Let's just take this a little
8 bit slowly. Again, because it really is, by far and away, the
9 bulk of your lodestar, and for the six other firms as well,
10 which is why I think the past cases of lodestar calculations
11 may not reflect current law firm economics is, but I may be
12 wrong.

13 Your associates communicate with the opposing side and
14 I take it with experts and so forth?

15 MR. SINGER: Yes.

16 THE COURT: And staff attorneys don't communicate with
17 the opposing side experts?

18 MR. SINGER: Not typically-- well, not to the same
19 extent that regular associates do. I mean, actually our staff
20 attorneys here second seated a number of depositions. I
21 believe, I think, seven depositions they second-seated or
22 second-chaired, so they had interactions there.

23 THE COURT: Just a moment.

24 MR. SINGER: Okay.

25 THE COURT: So they second-seated seven depositions--

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1 MR. SINGER: Yes, Judge.

2 THE COURT: -- out of 50? 70?

3 MR. SINGER: Out of 50, right.

4 THE COURT: And the other 43 were second-seated by
5 associates?

6 MR. SINGER: Or they were not second-seated.
7 Sometimes they were second-seated by a partner. But it would
8 be one of those, yes.

9 THE COURT: All right. Going with one lawyer would be
10 a good thing, but I don't think it's ever been done.

11 MR. SINGER: But they do interact with experts. They
12 do work on legal memoranda for us. In this case --

13 THE COURT: Did they do research for briefing? Let me
14 just say that it appears -- and I don't think you can contest
15 this -- essentially what they do is document review. That's
16 what they're hired for; that's what they do. A few of them may
17 do second seating at a deposition, but they're document review
18 people. Fair?

19 MR. SINGER: The majority of their work is spent on
20 document review.

21 THE COURT: Okay. Is the majority-- that may also be
22 true of associates. Is the majority of the associates' work
23 document review?

24 MR. SINGER: I don't know that the majority of the
25 work done by associates is document review.

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1 THE COURT: All right.

2 MR. SINGER: I do know that associates do document
3 review.

4 THE COURT: Yes, of course. So the work is different.
5 The staff attorneys essentially do document review and the
6 associates, who presumably are at a higher billing rate, do
7 more substantive work. Document review can be very important,
8 but it certainly is repetitive. You're talking 42 million
9 documents, I think.

10 MR. SINGER: Yes, Judge.

11 THE COURT: I think you beat the securities people by
12 two million. Huge amounts of documents and somebody has to go
13 through it with the aid of computers, and that's the staff
14 attorneys. Agreed?

15 MR. SINGER: Yes, your Honor.

16 THE COURT: Okay.

17 MR. SINGER: But --

18 THE COURT: Okay. You say they're employees. They
19 get W-2s?

20 MR. SINGER: Yes.

21 THE COURT: All right. Talk to me more.

22 MR. SINGER: They are firm employees.

23 THE COURT: They get full benefits?

24 MR. SINGER: They have access to benefits, yes. They
25 get the benefits offered through the firm, provides for

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1 workers' comp, health insurance, and a 401(k) plan.

2 THE COURT: Now you say "access to benefits." Is that
3 the same as associate attorneys' access to benefits?

4 MR. SINGER: I don't know if they get the exact same
5 level of benefits provided as to associates. I'm not that
6 familiar with the particular health insurance plans, for
7 instance, that an associate gets as opposed to a staff
8 attorney, but I know they are allowed to participate in the
9 firm's health insurance plan.

10 THE COURT: No, no, I understand that. I just don't
11 know if your phrasing of "they have access to" is different
12 than the associates. That is it may be, for all I know, that
13 when an associate comes on, his or her employment package
14 includes health benefits, but it's not the same for staff
15 attorneys. I don't know. I'm asking.

16 MR. SINGER: There's a period of time, I know, when an
17 associate comes on board before they get health insurance,
18 before they can get a 401(k). You have to be at our firm for a
19 certain amount of time. I think that might be true for most
20 firms. I'm not 100 percent sure. That's also true for our
21 staff attorneys. I'm not sure of the exact amount of time
22 and I'm not sure of the exact benefit of the health plans,
23 but --

24 THE COURT: The question here is, are the benefits
25 given to staff attorneys different than the associate

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1 attorneys? And you can submit something to me after this so we
2 get a better sense of that.

3 MR. SINGER: Okay.

4 THE COURT: They work in your offices. Is that
5 correct?

6 MR. SINGER: Yes, Judge, they do. They work in our
7 offices in midtown Manhattan. That's where our offices are
8 located, 1285 --

9 THE COURT: And I take it there's not a separate floor
10 for them. I remember, I think it was in your affidavit,
11 actually, maybe the second one, that said some are even right
12 down the hall.

13 MR. SINGER: There's no separate floor for them,
14 Judge. They are. They are right down the hall. They share
15 offices with our partners and associates.

16 THE COURT: And we know they differ from associates in
17 what they do and we know they differ from associates in being
18 on the firm website. And we know the reason why; you've told
19 me.

20 Their billing rates are the same as associates.
21 Right?

22 MR. SINGER: No, I don't think that's right.

23 THE COURT: All right.

24 MR. SINGER: I think their hourly rates-- and that's
25 the key distinction. Their hourly rates reflect the difference

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1 in the work that's done by staff attorneys and by senior
2 associates.

3 THE COURT: The hourly rates for the staff attorneys,
4 you're proposing rates of \$340 an hour to \$425 an hour for
5 essentially document review. That's how I read your papers.
6 Is that right?

7 MR. SINGER: I think, Judge, we had -- for the most
8 part, the rates we charged for staff attorneys are \$340 to \$395
9 an hour. There were two exceptions, a very small amount of
10 time by two very senior staff attorneys, that were charged at
11 \$425 an hour, but that was a very small amount of time.

12 THE COURT: Right.

13 MR. SINGER: I think the true time was in the range of
14 \$340 an hour to \$395 an hour. The blended rate is somewhere in
15 the middle of that number. Those rates, Judge, are the rates
16 that we charge for the most junior associates at the firm. So
17 that's a rate that's equivalent to the rate charged for a
18 first-year associate, someone who is just out--

19 THE COURT: \$395?

20 MR. SINGER: Roughly \$350. The higher rate might be a
21 second-year associate. But those are the rates charged for
22 very junior associates, people just out of law school. And
23 many of our staff attorneys obviously have more experience than
24 that, but we charge them out at the rate that we charge for the
25 most junior associate that we have, mostly first- or

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1 second-year associates.

2 And if you look, your Honor, the rates we charge for
3 associates, they can vary, but they're generally, I mean if you
4 look in our papers, \$440 an hour --

5 THE COURT: Where are they in your papers? This is
6 the attachment to your first declaration?

7 MR. SINGER: Yes, to my first declaration. It's
8 Exhibit 12A.

9 THE COURT: And where are you?

10 MR. SINGER: The first page of Exhibit 12A to my
11 declaration. And it's a chart "Bernstein Litowitz Berger &
12 Grossmann Time Report."

13 THE COURT: No, I'm sorry. Let me just see what I
14 have here. I have your first declaration, 12A, declaration of
15 yourself.

16 MR. SINGER: Right. The declaration of myself. And
17 then Exhibit 12 is a --

18 THE COURT: Oh, Exhibit 12 to that?

19 MR. SINGER: Right, Exhibit 12 to the first
20 declaration I submitted. It's a lengthy document.

21 THE COURT: Yes, that's what I'm looking at.

22 MR. SINGER: Right.

23 THE COURT: In your first declaration, I'm looking at
24 12A.

25 MR. SINGER: Yes.

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1 THE COURT: But the 12A that I have -- I can pass it
2 down to you.

3 MR. SINGER: Okay.

4 THE COURT: -- is a declaration of you.

5 MR. SINGER: I'll find it. I apologize, Judge. Keep
6 flipping the pages to that. 12A is a declaration of me.
7 Exhibit 1 to that, if you go a few pages-- I apologize.

8 THE COURT: Yes, sir, I have it. Thank you.

9 MR. SINGER: I apologize, Judge, for the difficulty in
10 finding it. Many of these -- if you look down that list,
11 Judge, you'll see--

12 THE COURT: They go from \$390 to \$515.

13 MR. SINGER: Correct. So the rates we charge for
14 associates are higher. Mr. Doreste, who was \$390, I believe he
15 was either a first- or second-year associate at the time. He's
16 no longer with our firm, but that's who -- that was the rate we
17 charged, that he was charged at. The others are all higher.
18 So our staff attorney rates are generally-- well, not
19 generally. They are lower than the rates we charge for our
20 associates other than the most junior associates.

21 THE COURT: And I take it your practice is essentially
22 entirely contingency work; that is, people don't actually pay
23 the hourly rate.

24 MR. SINGER: That's correct. Our work is contingency
25 work. I will say, Judge, in terms of those rates, that those

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1 rates-- we have submitted those rates to numerous judges in
2 this district in recent years in large cases similar to this.
3 That includes the Bank of America case before Judge Castel; the
4 Lehman Brothers case before Judge Kaplan; the Wachovia bond
5 litigation before Judge Sullivan; and the Merrill Lynch
6 mortgage-backed securities litigation before Judge Rakoff.

7 In all of those cases, staff attorney time was
8 submitted at these rates. These rates have remained constant
9 since 2010. We have not raised them. They're the same as they
10 were three, four years ago. And in each of those cases that I
11 just mentioned, staff attorney time accounted for a substantial
12 percentage, if not a majority of our time, in those cases.

13 So just for example --

14 THE COURT: Well, my working assumption is it was far
15 more than a majority, but go ahead.

16 MR. SINGER: Well, in Wachovia, for example, the
17 Wachovia bond case, staff attorneys accounted for almost
18 two-thirds of our time, 63 percent. That was a case we didn't
19 take depositions in.

20 THE COURT: Are staff attorneys brought on to work on
21 a particular project?

22 MR. SINGER: Some are and some aren't. Many are with
23 us for periods of time. Your Honor asked about this particular
24 case. I think we still have somewhere between-- almost two
25 dozen staff attorneys who were working on this case when it

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1 concluded are still with our firm working on other matters. It
2 depends. Sometimes people leave on their own; sometimes there
3 might not be work for them. But for the most part, what we
4 like to do -- and I think this is reflected in the information
5 we gave your Honor -- is to the extent we have staff attorneys
6 who we like and who we believe are doing good work, we endeavor
7 to keep them on.

8 THE COURT: I take it -- and tell me if I'm wrong. I
9 take it your associates have a career path. That is, if
10 they're very good, they go into the partnership itself. I take
11 it that career path is not part of staff attorneys.

12 MR. SINGER: It is not entirely that, but not-- there
13 are-- I don't know if I would say it with such a blanket. I
14 can give an example sitting in this courtroom today, Judge.
15 Mr. Duncan, who is an attorney with our firm, he's an associate
16 with our firm, he started as a staff attorney with us. We
17 liked his work. We thought he did excellent work --

18 THE COURT: I take it he's the exception.

19 MR. SINGER: Yes, he is an exception, but it's not --

20 THE COURT: All right. Let me go back to the start.
21 When you hire associates, it's with the expectation or hope
22 that they, on their part and your part, that they will become
23 partners. That's not true of staff attorneys. Correct?

24 MR. SINGER: I think that's logical, Judge, yes.

25 THE COURT: All right. For example, in Kessler Topaz,

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1 almost all of the contract attorneys that they retained to work
2 with you have left, or at least 14 of the 22 have left. They
3 appear to be more based for a particular case. In other words,
4 the case is over and they've gone. There may be other factors.

5 Are there other differences between your staff
6 attorneys and your associates?

7 MR. SINGER: No, I think the principal difference in
8 them is that staff attorneys, in terms of the work that they
9 do, we do hire staff attorneys. Their principal job is to do
10 document review and analysis for us.

11 THE COURT: And they're full-time employees?

12 MR. SINGER: They are employees of the firm, yes.
13 They are employees.

14 THE COURT: They're full-time employees?

15 MR. SINGER: Yes.

16 THE COURT: And I take it they're paid on salary and
17 there may be some bonus aspect?

18 MR. SINGER: They are, I believe, paid by the hour,
19 but there is a bonus aspect that they can get.

20 THE COURT: And are regular associates paid by the
21 hour?

22 MR. SINGER: No. They receive a salary and they are
23 also eligible to receive bonuses.

24 THE COURT: And, again, when I say "full time," do
25 they have a number of hours that they have to work or are

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1 expected to work?

2 MR. SINGER: I don't think so, Judge. I don't think
3 it's that formal. It's sort of-- I guess the expectation would
4 be 40 hours. I think the expectation is 40 hours a week. I'm
5 not 100 percent sure, but that's what I believe the expectation
6 is. That might be, yes, we expect 40 hours a week.

7 THE COURT: All right. Now, you went out of your way
8 to tell me that these are not contract attorneys.

9 In your view, what is a contract attorney?

10 MR. SINGER: A contract attorney is someone who's not
11 an employee of your firm. They're an independent contractor
12 who you hire --

13 THE COURT: In other words, they get a 1099?

14 MR. SINGER: Correct. You hire them and-- you hire
15 them through a temp agency. You bring them on for a specific
16 project. At the end of that project, they leave. That is a
17 contract attorney. A staff attorney is different, different in
18 terms of who we hire. We hire them. As I say, they have an
19 opportunity to get --

20 THE COURT: Well, I take it you use headhunting firms.
21 I assume you go through employment agencies of some type.

22 MR. SINGER: Yes, sometimes. Sometimes people come to
23 us through word of mouth. Just the typical form of hiring.
24 The same is true for associates. Sometimes we go through
25 headhunters; other times we don't. So I think it's a similar

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1 method of hiring them.

2 We do train them. They are entitled to participate in
3 firm-sponsored CLEs, which is another issue that an objector
4 raised. They have access to --

5 THE COURT: Again, is that the same as with your
6 associates? That is, would you use the same phrasing, they're
7 "entitled" to participate?

8 MR. SINGER: Yes.

9 THE COURT: It's not that the-- or is it that your
10 associates must do CLE?

11 MR. SINGER: No. Well, everybody has their CLE
12 requirements. But, no, the phrase-- the words are the same.

13 THE COURT: Okay. To your knowledge, do contract
14 attorneys and staff attorneys do the same work? I take it the
15 answer is yes: Document review. That's what these people are
16 hired for.

17 MR. SINGER: I think they do similar work. I think
18 staff attorneys do more substantive work. I think our staff
19 attorneys do more substantive work. I don't know any contract
20 attorneys who would second seat a deposition normally.

21 THE COURT: Well, but it looks the same way in your
22 firm if you're talking about seven out of 50-something.

23 MR. SINGER: But I think--

24 THE COURT: There's nothing wrong with having
25 employees who do document work. I'm just trying-- I mean, the

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1 document work is what's critical to these cases in many
2 circumstances. I'm just trying to compare and contrast what
3 these people do with what your associates do.

4 What comparators can you give me or what facts can you
5 give me that say these people -- that is, the staff
6 attorneys -- are doing important work for the case, and in fact
7 are the workhorses of these case, both I think from the
8 standpoint of defendants as well as from the standpoint of
9 plaintiffs, what can you give me as facts or comparators for
10 the fact that the document review attorneys, who you call staff
11 attorneys, are that the market, that is a reasonable client,
12 will pay \$340 to \$395? Now, I think you told me that-- you
13 said that \$395 is an outlier. Except for the \$395 people,
14 what's the real range we're talking about for staff attorneys
15 at your firm?

16 MR. SINGER: The range is, I believe, \$340 an hour to
17 \$395 an hour.

18 THE COURT: No, I'm sorry. I thought you told me that
19 the \$395s were just a couple and they were outliers.

20 MR. SINGER: No, \$425 an hour were a couple of
21 outliers.

22 THE COURT: Oh, I see.

23 MR. SINGER: There are a couple of staff attorneys who
24 have been with us truly for years and years.

25 THE COURT: I understand.

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1 MR. SINGER: Those are the only ones. But the vast
2 majority were in the range of \$340 to \$395 per hour.

3 THE COURT: Okay. So let me get back to my question.
4 What comparators can you give me, what facts can you give me,
5 to say a reasonable client would pay \$340 to \$395 an hour for
6 people to do document review apart from what you've already
7 told me? That is, other judges in this district have said it's
8 okay. I don't know that that by itself tells me what a
9 reasonable client would pay. And you've told me -- because
10 you've been very forthcoming and honest and I appreciate it --
11 that you don't have clients who you send out monthly billings
12 to, so we can't use that.

13 The fact that other judges have accepted your figures
14 is interesting and has some weight, but I don't think it either
15 is a fact or a comparator. So that's what I'm leaving you
16 with.

17 The one thing in your papers that I can see is a
18 comparison of bankruptcy cases. I don't think that's a valid
19 comparison because I don't think that bankruptcy issue is what
20 a reasonable client would pay. But that certainly is something
21 that you showed.

22 Is there anything else you could tell me that would
23 show a reasonable paying client would pay these sums for
24 document review?

25 MR. SINGER: Let me address it this way. First, I do

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1 think that study is important. The American Lawyers did a
2 study. That was the work done and it showed the billing rates
3 for 18 large --

4 THE COURT: Yes, but the bankruptcy court is its own
5 world. It's highly criticized for the rates being far too
6 high. It's a selected group. The survey, which doesn't
7 purport to be scientific -- actually it only has the firms
8 which I think are the highest-billing firms, including Paul
9 Weiss, on it. I'm not sure that that's an accurate reflection
10 of the marketplace.

11 MR. SINGER: I think, Judge, again, the rates we
12 charged are the rates that are in line with rates we charge for
13 the most junior associates at our firm. And I believe that's
14 true for defense firms, too, from studies we've seen and
15 anecdotal evidence.

16 Do those rates compare favorably with defense firms?
17 I'm confident that defense firms charge for first- and
18 second-year associates fees or rates in the range of rates that
19 we are charging for our staff attorneys. That is a very
20 appropriate, completely appropriate rate to charge for staff
21 attorneys who are doing document review.

22 And the work that they do, Judge, is -- in terms of
23 what a client would pay, the work that they would do, that they
24 do for us, is invaluable. It's invaluable. When your Honor
25 says, What would a client pay? a client is getting a bargain,

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1 frankly, to pay \$350 an hour for the work done by staff
2 attorneys because their work can be the difference between
3 winning or losing a case. And it was actually here.

4 It was, for example -- when defendants made their Rule
5 12(c) motion on *Fait*, that was potentially a very problematic
6 motion for us. If we had lost it, it would have arguably taken
7 out the vast majority of our claims; certainly the claims that
8 were most valuable. It was very important that we win that
9 motion. Very important.

10 When we opposed it, we submitted a letter brief to
11 your Honor which said, Judge, this case, it's premature to
12 consider now. We shouldn't consider it. It should be kicked
13 down the road. And one of the things we did is we gave your
14 Honor evidence, certain e-mails and other documents, that we
15 believed supported our allegations. And we attached that
16 evidence to the brief. And I think ultimately we were
17 successful in opposing that motion. We convinced the Court,
18 the Court agreed to consider this down the road.

19 THE COURT: Well, that's right. I didn't decide it.
20 I said it's for summary judgment.

21 MR. SINGER: Exactly. But the reason we did it and
22 the reason we said it, was we said, hey, Judge if you're going
23 to consider this now, we're going to amend our complaint and
24 we're going to put in documents like this and you're going to
25 have to convert it to a motion for summary judgment. So if

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1 you're going to do that, Judge, don't do it now and let's
2 engage in this process now. Do it in accordance with the
3 schedule at the end of the case, when we have all of our
4 evidence.

5 That was a good argument to make. That won. That
6 prevailed.

7 THE COURT: That was a good argument to me, also.

8 MR. SINGER: I know. And the point I want to make is
9 that if you look at that letter, it cites a number of e-mails.
10 Come out of the blue, perhaps, and we discussed their
11 importance to us. This shows X; that shows Y.

12 The point I wanted to make is that those documents
13 that help us defeat a motion like that, which comes at a
14 critical time in a case, they're found by staff attorneys.
15 That's who finds them. And they go-- in order to find them,
16 they go through 43 million pages of documents to help us find
17 the relatively few that can help us win a case. These e-mails
18 can be a single line --

19 THE COURT: I don't think the issue is their
20 importance to you. I concede that. Or it's not for me to
21 concede. I agree with you that the issue is what a reasonable
22 client would pay.

23 MR. SINGER: And that's what I'm getting to, Judge,
24 because a reasonable client for that sort of work to win that
25 motion would be happy to pay the rate that we charged for a

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1 first- or second-year associate.

2 THE COURT: And what do you cite to me?

3 MR. SINGER: Well, I've cited to your Honor the fact
4 that we've submitted the-- I don't have the-- I mean, we've
5 cited-- I don't know how to get --

6 THE COURT: It may not be a question you can answer,
7 but the cases say that's the test. So that's what I'm looking
8 for, that's all.

9 MR. SINGER: I appreciate that. I'm trying to explain
10 to you though why --

11 THE COURT: And, again, simply because other judges
12 have said-- I won't use the word "rubber-stamp," that's not
13 what they're doing, but other judges have signed off on these
14 rates. I don't think that by itself gets you over the finish
15 line.

16 MR. SINGER: I think it's a factor, Judge.

17 THE COURT: Sure.

18 MR. SINGER: I think it's a significant factor --

19 THE COURT: I agree.

20 MR. SINGER: -- that numerous other judges -- we've
21 submitted these rates. They haven't raised any issue. I don't
22 think any judge that we've been before on those fee cases, and
23 just recently Judge Castel, rubber-stamped our fee application.

24 THE COURT: No, that's why -- I used that statement
25 but it's wrong. They weren't doing that. I'm just trying to

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1 see what you can give me apart from the fact that others have
2 done. That's all.

3 MR. SINGER: I think that's -- we have that. We have
4 the American Lawyers study. We have the fact that we haven't
5 raised our rates in years, and the fact that-- and the fact
6 that when you-- that these are-- I guess my overall point is
7 that the work that they do is incredibly important to us and it
8 has to be done by trained, quality attorneys.

9 That's why we hire them as staff attorneys. That's
10 why we make them employees of the firm rather than contract
11 attorneys, and why they work on site rather than off site. We
12 believe that's better for the way we handle cases. We believe
13 it's better for our classes; it's better for our clients. That
14 way they're in our offices. They're employees of the firm. We
15 have better quality control over them. We can monitor them
16 more easily. We can interact with them. Many of them do stay
17 on or have experience with us. And I think, Judge, that all of
18 that is reflected in the results we obtain for investors,
19 including this one.

20 So I think, Judge, where you have a situation where
21 you have a-- where, again, you have attorneys, many with years
22 of experience, and they are doing work that from our
23 perspective-- I don't know that defense firms, that they have
24 to review documents the same way we do. They don't have the
25 burden of proof on it. I don't know that a defense firm has to

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1 conduct the same document review we do. They don't have the
2 burden of proof on issues.

3 If a staff attorney misses one of those documents,
4 Judge, if they miss a key document, it's gone forever. It's
5 gone. We will never find it again. It literally goes, boom,
6 see you. That's a problem for us. That could be the
7 difference between winning or losing. That's why we have the
8 system we have in place and it's why we do hire quality
9 attorneys and why those rates that we charge for them are
10 entirely appropriate.

11 I mean, it would be-- that's what -- that's what they
12 are. I mean, your Honor, I've given you some information about
13 what we charge for associates. We can always give your Honor a
14 chart of that if your Honor wants, but that is the information
15 for our hourly rates.

16 THE COURT: All right. I'm sorry. I didn't mean
17 to --

18 MR. SINGER: No, that is the information for hourly
19 rates. And the only point I would add, and I don't -- even--
20 this is a separate point. It goes to the rates. Even if your
21 Honor were to reduce the rates that we charged for staff
22 attorneys in this particular case, the multiplier we're seeking
23 under this fee would still be extremely reasonable.

24 So just, for example, if your Honor were to reduce the
25 rate for staff attorneys by 20 percent, it's a substantial

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1 reduction. Twenty percent is at \$350, \$360, \$90 dollars an
2 hour you would take that down to. The adjusted multiplier is
3 about 1.95. If you cut it by 25 percent, it's 2.04. If you
4 were to cut it by 35 percent, more than a third, which is --
5 respectfully, Judge, I don't think any reduction is entitled,
6 but that would be massive. It would be a multiplier of 2.2.

7 So, again, I don't think it's going to dramatically
8 impact the Court's analysis or the multiplier awarded. We have
9 staff attorneys --

10 THE COURT: Well, I haven't done those numbers quite
11 that way, but I'm not quite sure that would be so given the
12 fact that the hours are 75 to 80 percent of the hours you're
13 talking about.

14 MR. SINGER: This is the math I was handed, Judge.

15 THE COURT: Okay.

16 MR. SINGER: So I'm assuming it's --

17 THE COURT: Mr. Berger knows how to add.

18 MR. SINGER: But I believe that those are right and we
19 could always calculate them again. But I think that is what--
20 those are the numbers that we've come up with.

21 THE COURT: All right. I think I understand your
22 answer.

23 Let me just ask, is there anything else you wanted to
24 tell me, sir?

25 MR. SINGER: No, Judge. I think that's it for now.

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1 THE COURT: Okay.

2 MR. SINGER: I appreciate it.

3 THE COURT: Take a few moments, because I know people
4 on your side want to add in something. So why don't you talk
5 to your colleagues and if there's anything else you want to
6 add, I'll be glad to hear it. There's no problem with that at
7 all.

8 MR. SINGER: Thank you, Judge.

9 THE COURT: People should work as a team.

10 (Pause)

11 THE COURT: Mr. Singer, there's no question but that
12 in my mind-- let me rephrase it. I think this is a wonderful
13 settlement for the class. They're receiving \$730 million.
14 You're seeking \$146 million; obviously a significant sum. The
15 issue is not whether that's a lot or a little. The issue is,
16 would a reasonable client pay \$146 million in today's
17 marketplace? That's what I'm focusing on.

18 Is there anything anyone wanted to add on our
19 discussion? Yes, sir.

20 MR. BERGER: Good morning, your Honor. Max Berger,
21 Bernstein Litowitz. You know, certainly to the extent your
22 Honor wishes to have any further submissions from us, we're
23 certainly happy to provide them. The best we can do-- there
24 are limited examples at our firm where we do charge by the hour
25 and two significant clients. However, I don't think it's

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1 really reflective of the vast majority of our work. I mean,
2 probably at least 90 percent of the work that we do is on a
3 fully contingent basis, so I don't think we could really use
4 that as really an appropriate comparison.

5 I think what is an appropriate comparison for us is,
6 as your Honor knows, we litigate against the biggest and the
7 best law firms in the country and we have to compete
8 head-to-head with them. And the burden is on us to prove our
9 case, so we need to hire the very best, best people to
10 prosecute our litigation.

11 So I do believe it is an appropriate comparison to
12 say, well, do our rates compare favorably, just in general for
13 lawyers, with defense firms?

14 THE COURT: Well, yes, let's talk about that. I take
15 it you've read the transcript or were present, you had
16 colleagues present I take it, at the fairness hearing on the
17 securities class action. And I take it you believe-- I mean,
18 you've just said that defense firms obviously have qualified
19 people doing their work.

20 And in that transcript I'm sure you read what Citicorp
21 pays for the contract attorneys it hires. And if we're going
22 to assume analyzing documents, reviewing documents, is as
23 important to the defense as it is to the plaintiffs, that's a
24 figure that suggests no reasonable client would pay \$340 to
25 \$395 for document review.

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1 MR. BERGER: I don't think that's a fair comparison,
2 your Honor.

3 THE COURT: Because?

4 MR. BERGER: I'll tell you why. The defense firms,
5 for example, Citigroup, I mean, Lord knows how many hundreds of
6 attorneys Citigroup has in their in-house legal department.
7 Lord knows how many employees they have. I would venture to
8 guess there's probably --

9 THE COURT: Well, we're not talking about their
10 in-house. We're talking about their contract attorneys.

11 MR. BERGER: No, no. What I mean, your Honor, is that
12 our clients in our case are, generally speaking, pension
13 systems.

14 THE COURT: Huge, billion-dollar pension systems.

15 MR. BERGER: Not billion dollar. Huge --

16 THE COURT: Hundreds of millions.

17 MR. BERGER: Huge only in the sense of the beneficiary
18 money that they are required to manage, but they're not managed
19 by --

20 THE COURT: Only two at a time.

21 MR. BERGER: I believe that most defense firms-- if
22 your Honor is talking about a reasonable marketplace, I totally
23 get, you know, what you're driving at. From my perspective,
24 not that I believe it matters particularly, I believe it's very
25 legitimate. But I think that defense --

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1 THE COURT: It does matter.

2 MR. BERGER: Defendants in our cases-- okay.

3 Defendants in our cases are very varied. When you take a huge
4 bank that has law firms representing them all over the world
5 basically, they have the ability to drive market rates down.
6 They can either-- they can either have their law firm provide
7 lawyers at their typical hourly rates or some rate that is a
8 discounted rate to represent them, or they can bring in their
9 own people because that's what they do.

10 But most defendants in these cases will hire a law
11 firm to litigate a case, defend it or prosecute a case, will
12 hire that law firm and that law firm will charge them their
13 hourly rates. So what constitutes a reasonable hourly rate?

14 From our perspective we believe that you really-- we
15 are talking about experienced lawyers who represent our staff
16 attorneys in our cases. And we thought it would be very
17 appropriate for the hourly rates that we charge for them to be
18 representative of first- and second-year lawyers. Some of them
19 are 10- and 15- and 20-year lawyers.

20 THE COURT: I understand that. I think we both
21 understand what each other is saying. Document review is
22 document review. It's important. It's also mechanical and
23 routine, but it's important. It's important for the defense;
24 it's important for the prosecution. You want the very best
25 document reviewers and the defense wants the very best document

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1 reviewers.

2 You've heard what the market rate is for document
3 reviewers in the securities action for document reviewers hired
4 by the client. It's not the junior associate rate. So the
5 question is, what is the appropriate rate for document
6 reviewers? And I'm having trouble getting that figure.

7 The reason I'm asking you is I think the Second
8 Circuit requires me to decide what a hypothetical reasonable
9 client would pay for these services. In the case of defense
10 firms, they don't have a hypothetical reasonable client; they
11 have the actual client. That's less so for contingency firms.
12 That's where my trouble is, that's all.

13 MR. BERGER: But, your Honor, isn't the appropriate
14 question: What would a defense firm charge for a staff
15 attorney who was going to primarily review documents if they
16 were basically paying those staff attorneys and then billing it
17 to the client? Not every defendant has the market power of a
18 Citigroup to basically drive down rates.

19 THE COURT: Let's assume--

20 MR. BERGER: It's fortuitous.

21 THE COURT: Let's assume--

22 MR. BERGER: It's fortuitous that Citigroup-- I'm
23 sorry, I didn't mean to interrupt your Honor.

24 THE COURT: No, it's all right. First of all, I think
25 you are not being fair to your massive pension fund clients.

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1 But the issue is still there because they don't actually pay an
2 hourly rate. Let me assume that you are correct for this
3 moment, for this issue, that the question is what would an
4 hourly paying client-- what would a law firm charge an hourly
5 paying client for document review? Forget for the moment
6 whether we call it a staff attorney or a contract attorney.
7 Let's simply say for document review, because that's what staff
8 attorneys do and that's what contract attorneys do.

9 So what's the answer to that question: What would an
10 hourly person pay for that rate? I'm sorry, what would--

11 MR. BERGER: What would a law firm.

12 THE COURT: What would a defense client pay on an
13 hourly basis for somebody doing document review? How do I find
14 out that information?

15 MR. BERGER: Well, what would be the billing rate,
16 your Honor?

17 THE COURT: No. How do you phrase the question?

18 MR. BERGER: Well, I would say the billing rate just
19 because it's not the client-- it's not the client --

20 THE COURT: Fair enough.

21 MR. BERGER: It's not the client that's paying it.
22 It's the billing rate. What would a large defense firm bill
23 document reviewers out to a client when the client is not
24 supplying the contract attorney?

25 THE COURT: What information can you give me? Do you

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1 have anything like that in your papers? If so, I'd love to see
2 it. And you can submit it to me afterwards. That's okay.

3 MR. BERGER: I don't believe we do. I think we just
4 have first- and second-year associates.

5 THE COURT: If you have it, sir, you certainly can
6 send it to me. Okay? Because I think that's relevant. I
7 think you're focusing in or you're phrasing it in an
8 appropriate way. I'll take any information you can find on
9 that.

10 Okay. Thank you. I appreciate the discussion. And,
11 Mr. Singer, I appreciate it, also.

12 I believe I received notification that one of the
13 objectors wanted to speak. That is, Mr. Pentz for the Hopson
14 objection. To the extent this was one of your areas of
15 concern, I think we've been addressing it, is Mr. Pentz here?
16 Let me put it this way: Is there anyone here who wants to
17 speak on behalf of an objector?

18 All right. Does the defense want to add anything?

19 MR. ROSEN: Your Honor, I think Mr. Singer has
20 admirably covered all of the issues. We did submit a written
21 response in mid-July to certain of the objections, specifically
22 on the question of individual contributions. You and
23 Mr. Singer had a dialogue on that subject. I'm happy to answer
24 any questions the Court has, but otherwise I'm content to rely
25 on our written submission.

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1 THE COURT: Well, thank you very much. If there's
2 nothing else, I appreciate everybody coming in and you'll have
3 an opinion in due course. Thank you very much.

4 MR. SINGER: Thank you, Judge.

5 (Adjourned)